IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2002

Coram :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM

and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

H.C.P. No.1188 of 2001

[In the matter of the detenu FEROZ KHAN]

Syed Niza .. Petitioner

Vs.

1. State of Tamil Nadu, rep. by
Secretary to Government,
Public (SC) Department,
Fort St. George,
Chennai-600 009.

2. Union of India, rep. by
the Secretary to Government,
Ministry of Finance,
Dept. of Revenue COFEPOSA Unit,
New Delhi. .. Respondents

PRAYER : Petition under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to issue a Writ of Habeas Corpus calling for the records leading to the detention of Feroz Khan under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 197 4) vide detention order dated 9.7.2001 on the file of the first respondent herein made in Proceedings G.O. No.SR.I/721-6/2001 and quash the same as illegal and consequently direct the respondents herein to set the said detenu at liberty from the Central Prison, Chennai.

ORDER : This Habeas Corpus Petition coming on for hearing, upon perusing the petitions and the affidavits filed in support thereof and

upon hearing the arguments of

! Mr. B. Kumar, Senior Counsel for Mr. R. Loganathan, Advocate for the petitioner

and of
^ Mr. I. Subramanian, Public Prosecutor appearing on behalf of the first respondent
State and Mr. Su. Srinivasan, A.C.G.S.C., appearing on behalf of the second respondent Union, the court passed the following order :

: O R D E R

P. SHANMUGAM, J.

The above writ petition is filed for the issue of a Writ of Habeas Corpus by calling for the records of the first respondent connected with G.O. No.SR.I/721-6/2001 Public (SC) dated 9.7.2001, quash the same and direct the respondents to produce the detenu Feroz Khan, son of Abdul Habeeb now detained in Central Prison, Chennai under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and set him at liberty. The facts relating to this case are stated hereunder.

2. Mr. Feroz Khan, who is referred to as the detenu hereunder, holder of an Indian Passport No.B-5267919 dated 18.4.2001, arrived as a passenger from Singapore by Singapore Airlines Flight No.SQ-410/15.5.2001 at the Anna International Airport, Chennai. According to the detention order, when the detenu attempted to pass through the green channel, he was intercepted by the Customs Intelligence Officer and not being satisfied with his reply that he has brought only household articles, he was questioned and his baggages namely one 'CAMPRO' zipper suitcase and one 'EMCORA' multi colour zipper bag were opened and examined and they were found to contain video camera, digital diary, cell phone, CD player and calculators, with a total CIF value of Rs.6,80,500/- and a market value of Rs.10,20,750/-. He is said to have given a voluntary statement before the Customs Officer immediately after seizure on 15.5.2001 and on finding that he was attempting to import the electronic goods by way of non-declaration/mis-declaration with the intention to evade customs duty, he was arrested on 16.5.2001 under Section 104(1) of the Customs Act, 1962 and remanded to judicial custody. Thereafter, the impugned order of detention dated 9.7.2001 came to be passed with a view to prevent the detenu from smuggling goods in future. The H.C.P. is filed against this detention order.

3. Mr. B. Kumar, learned senior counsel appearing on behalf of the petitioner raised the following three main contentions :

(i) In the grounds of detention, the detenu is said to have collected two checked-in baggages, both without baggage tag, and one

handbag and attempted to pass through the green channel, whereupon he was intercepted. The grounds of detention further went on to say that in his confession statement, the detenu had narrated "the sequence of events" that led to the seizure of the electronic goods which were brought by him with an intention to sell them for a profit. According to him, in his confession statement, he had not stated that he had attempted to pass through the green channel. In other words, his submission is that the sequence of events said to have been narrated by the detenu cannot lead to the inference that he had admitted of having gone through the green channel. The detaining authority tries to seek corroboration in the statement, but actually there is no such admission by the detenu.

(ii) The Customs Clearance Card seized from the detenu refers only to two baggages, one as a checked-in baggage and one as a handbag. Whereas, the detention order proceeded on the basis that the detenu had brought in two checked-in baggages which contained electronic goods. The detaining authority failed to consider this discrepancy between the statutory document and the version of the department.

(iii) The detenu was a driver and he went to Singapore to secure employment, and this being the first ever trip undertaken by him abroad and the value of the items seized being very nominal and the items being dutiable goods, this one incident cannot give rise to a subjective satisfaction that he will indulge in such activities in future.

Therefore, according to the learned senior counsel, there is a total non-application of mind on the part of the detaining authority before passing the detention order.

4. Learned Public Prosecutor, seeking to sustain the detention order, submits that the stand of the detenu that it was his first ever trip abroad and that he went to Singapore to secure employment his patently false. He referred to the entry in the passport of the detenu, wherein it is stated as follows :

"The holder had previously travelled with an Indian Passport No.B-99 7077 - Dated 29.4.1994 Issued at Chennai, which has been cancelled and returned."

He further refers to the Immigration entry made at the Chennai Airport dated 14.5.2001 and the Immigration Pass to Singapore dated 15.5.20 01. Therefore, according to the learned Public Prosecutor, he left Chennai on 14.5.2001 and returned to Chennai on the next day, i.e. 15.5.2001 and therefore, his statement that for the detenu, this is the first time he had ever travelled abroad and that he went to Singapore for a job is wrong. He had obviously went to Singapore and came back after collecting the packed material with the value of Rs.10 lakhs and submits that his plea that he is an unemployed driver and went to Singapore in search of an employment is stated only to be rejected. He further submits that as

per his confession statement admitting that he took loan from his uncle at Singapore and brought electronic goods and that he made a mis-declaration in reference to the value of the goods and that he had replied to the Customs Officer that it contained only household articles and that on examination of the suitcase and bag, it was found that they contained electronic goods valued at Rs.6,82,500/- and they were seized under a mahazar. According to him, he brought those goods with an intention to earn money, knowing fully well that it is an offence to bring them without licence and carry them without the knowledge of the Customs Officer. Learned Public Prosecutor submitted that from the facts, it is clear that the detenu, has with a design, gone to Singapore and brought the electronic goods and deliberately mis-declared the goods with an ulterior motive and therefore, the subjective satisfaction of the detaining authority that he will indulge in future smuggling activity has to be sustained.

5. On the aspect of misreading of the materials, it is submitted that the detenu had identified the baggages as his baggages in the presence of witnesses and the examination of his baggages was also carried out in the presence of the detenu who had admitted the ownership of the goods. In his voluntary statement given immediately after the seizure, he had accepted that the goods belonged to him and that he had brought them to earn profit and had accepted it as an offence. According to him, there is no misreading or inconsistency in the detention order in reference to the sequence of events read with the stand that the detenu attempted to pass through the green channel and on interception and questioning and after examination, it was found that the goods were brought by the detenu and were attempted to be removed without declaring them for earning more profit.

6. It is further submitted that the detaining authority has taken into account and considered all the facts and the materials as well as the documents before passing the order of detention.

7. We have heard the counsel and considered the matter carefully.

8. On the first point, we find from the sworn statement of the detenu dated 15.5.2001 wherein he has stated that after clearing the immigration formalities, he had collected the above mentioned baggages and was proceeding to go out when the Customs Officer intercepted him. If he really intended to go through the red channel, he would not have stated that he was proceeding to go out. Therefore, the stand of the Customs Officer that after the immigration formalities, he had collected two checked-in baggages, both without baggage tag, and one handbag and was attempting to pass through the green channel when he was intercepted by them has to be accepted. We do not find any discrepancy between the reference to the sequence of events and the reference of the detenu's attempt to pass through the green channel. Read with the other statement dated 16.5.2001 that when the Customs Officer asked him about the luggage tag and claim tag, he had stated out of fear that he had torn off the

above mentioned tags and that he had replied on his interception that he was carrying only household articles and after a detailed examination and questioning in the presence of witnesses, he had replied also to the same effect, but it was only when the baggages were opened and examined in his presence and the presence of the witnesses it was found that they contained electronic goods and that he was trying to smuggle them into India without declaring them to the Customs and not having any document for receipt or import of the said goods. Therefore, we are unable to see that there is any misreading of the statement leading to the non-application of mind.

9. In this context, reference was made to a judgment of the Division Bench in SHAKUL HAMEED A.M.S. VS. UNION OF INDIA (1982 LAW WEEKLY 13 6) in support of the proposition that if the satisfaction of a detaining authority is based on no material on record and in the complete absence of evidence or misreading of evidence by the detaining authority, the detention order is liable to be set aside. We are unable to see as to how the case on hand can be brought under the purview of no material on record or absence of material or misreading of evidence. In that case, it was argued that the detaining authority has misread a vital part of the evidence on record relating to the detenue. One of the witnesses had not mentioned the name of the detenu, whereas another witness had specifically referred to the name of the detenue. when the detaining authority tried to corroborate the statement of one witness, it was pointed out that there is a misreading of this part of the evidence which vitiates the foundation of the detention order. The court found that the detaining authority put words in the mouth of Chellappa when they said that it fully corroborated with Moulana. On the facts of this case, it cannot be stated that the detaining authority has misread the evidence.

10. Another judgment relied on by the senior counsel for the petitioner is RAFIQ MOHAMMED VS. UNION OF INDIA (1989 CRIMINAL LAW JOURNAL 1696), wherein a Division Bench of the Madhya Pradesh High Court has taken the view that grounds made for detention on mere assumption but not borne out either from the statement of the detenu relied upon or any material from record vitiates the order on the ground of nonapplication of mind. In that case, the detaining authority proceeded on the assumption that there was material to show that the detenu had in the past sold Morphine on behalf of the alleged suppliers when, as a matter of fact, there was no such material for the past act. This judgment also, in our view, will not have any assistance to the detenu herein.

11. From the records placed before us, we find that the detenu had filled up the Customs Clearance Card to the effect that he had brought in two baggages, one checked-in baggage and one hand baggage. He has not referred to the value of the dutiable goods being imported. He had left that column blank. In his retraction statement dated 15.6.2001, he says that he went to Singapore in search of a job and that the person he expected to meet there was not available and therefore, he returned to Chennai on 15.5.2001 and he purchased certain materials for his children and he put the one checked-in baggage. When he was carrying the

remaining bag, as his hand bag was found to weigh more than 10 kilograms, the security officers refused to permit him to take it and therefore, he had paid extra money for over 10 kilograms and then he put it in the checked-in baggage. Thus, it could be seen clearly that even according to the detenu, he had brought in two checked-in baggages, whereas in his declaration in the Customs Clearance Card, he has stated at one place the number of baggages as two and checked-in baggage one and hand bag one. As rightly pointed out by the learned Public Prosecutor, persons like the detenu, who are not ordinary regular passengers and who are involved in these kind of activities, have deliberately made self-serving entries in the Customs Duties Card to confuse the officials and to take advantage of the situation. Obviously, the Customs card did not mention about the value of the goods being imported. That itself is a wrong declaration and also in reference to the number of baggages. According to the confession statement of the detenu dated 15.5.2001 and 16.5.2001, it is seen that he had checked in those goods in one zipper suitcase and one zipper bag and that he was proceeding to go out when he was intercepted. He further says that when the Customs Officer asked him about the luggage tax and claim tax, he has stated out of fear that he had torn off the above mentioned tags. In his affidavit in paragraph 3, he had not stated the number of bags he had brought in, but in paragraph 6, he says that as per the perusal of the Customs Clearance Card, he had brought in only two luggages, one as checked-in baggage and one as a hand baggage. Even as per his retracted statement, he had brought in two baggages which were checked-in baggages. According to the petitioner, it is not in dispute that the hand bag did not contain any dutiable goods. In his statement, he has stated clearly that he had put the electronic goods in one zipper suitcase and one zipper bag and that they were brought in as checked-in baggages along with the hand bag with his personal articles. Therefore, we do not find any material discrepancy or misreading of the number of baggages brought in by the detenu so as to come to the conclusion that there is nonapplication of mind on the part of the detaining authority in passing the order of detention. On the other hand, the detenu had given conflicting or different versions in different places, obviously to take advantage of, if it suits him. The detenu, as pointed, is not an ordinary unemployed driver who had gone to Singapore to secure a job. He appears to be part of an organised action as evidenced by his attempt to confuse the issue.

12. In ABDUL SATTAR IBRAHIM MALIK VS. UNION OF INDIA (A.I.R. 1991 S.C. 2261), in reference to a case where it was contended there was no antecedent and being a solitary instance detention is not warranted, it was held by their lordships that it is a question of satisfaction of the detaining authority on the face of the materials placed before it. Even a solitary instance which has been detected may speak volumes about the potentialities of the detenu and merely on the ground that there was no antecedent, the detention order cannot be quashed. In this case, one of the main submissions of the learned counsel for the petitioner which was reiterated in his affidavit that it is the first time that he had travelled abroad for the purpose of securing a reasonable employment is found to be incorrect and contrary to the records. The detenu had

admittedly travelled abroad earlier and he could not have gone to Singapore for employment, in the facts and circumstances of the case. Hence, on this ground, it cannot be stated that there is non-application of mind on the part of the detaining authority.

13. For all these reasons, no grounds are made out to interfere with the order of detention. The H.C.P. therefore fails and it is accordingly dismissed. However, there will be no order as to costs.

Index : Yes (P.S.M.J.)
(P.T.J.)
Internet : Yes 20..03..2002
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Sd/..
Assistant Registrar

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Sub Assistant Registrar (C.S.)

To

1. The Secretary to Government,
State of Tamil Nadu,
Public (SC) Department,
Fort St. George,
Chennai-600 009.

2. The Secretary to Government,
Union of India,
Ministry of Finance,
Dept. of Revenue COFEPOSA Unit,
New Delhi.

3. The Superintendent,
Central Prison,
Chennai.

4. The Public Prosecutor,
High Court,
Chennai.

P. SHANMUGAM, J.
and
P. THANGAVEL, J.

Pre-delivery Order in
H.C.P. No.1188 of 2001

Delivered on 20-03-2002